2015-10

Rent Controls are very Different from the Forbidden Freeze

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Recommended Citation

Sirr, L. (2015) Rent controls are very different from the forbidden freeze. *The Sunday Times* 04.10.2015. doi:10.21427/5bbh-xw43

When a couple go their separate ways, working out how to divide a property can be the toughest decision of all, writes **Grainne Rothery**

ALAMY

Breaking up is hard to do — especially with a home

Lisa Byrne (not her real name) split up with her partner of seven years in July. The pair have a toddler, and on top of access issues that are fraught with difficulties, they also had to deal with a property they bought together three years ago.

Lisa's former boyfriend, who ended the relationship, does not want to leave the house or his child, so they sleep in separate rooms and share childcare duties.

"The tension is unbearable. We don't talk to each other. We sit in different rooms at night and when we do talk we argue. I feel like my life is in limbo," Lisa says.

A solicitor advised Lisa to stay in the family home. She approached her bank about getting a mortgage if the home was sold, and was told to return after three months of saving.

The rise in Dublin house prices over the past couple of years has been good news, because in the event of a sale Lisa and her former partner should walk away with more than their initial investment. "Now I just need to convince him to sell the house," Lisa says.

Breaking up is invariably hard to do, and for most couples dividing property — particularly a family home — is one of the most difficult and complex elements of the split.

In recent years it has been made worse by negative equity.

THE LAW

Under Irish law there are no hard and fast rules around entitlement and the division of a property between separating couples, says Orlaith McCarthy, a family law solicitor at Byrne Wallace.

"It depends on the means of the couple, whether they get an order in court or they negotiate something themselves," she says.

The best-case scenario is for couples to come to an agreement based on their individual requirements rather than venturing down the court route.

"We always like to start with mediation — the law requires that you advise clients to begin with it," McCarthy says. "The advantage is that it's not so much around entitlements or the law but that you decide what's going to work for your family, given your financial circumstances."

TAKING IT TO COURT

Cases that go to court will be judged on their own facts, says Elaine Callan, a partner at Carvill Rickard.

Several options are available in the classic scenario of the husband working and the wife staying at home with small children, and where the family does not have other major assets.

"They will sometimes leave the mother in the family home until the children reach 18 — or 23 if they're in full-time education — with the property then being sold, usually splitting the proceeds 50/50," Callan says. "At the moment that's how it's generally done."

If there are sufficient assets or if there is equity in the house, the court may direct that the property is sold to allow the parents to buy their own homes.

BUYING THE PROPERTY

Another option is for one party to buy out the other, says Donagh McGowan, chairman of the Law Society's family and child law committee and principal of Donagh McGowan & Co solicitors.

"Before the crash that was quite easy. Banks were lending money very easily, allowing one party to refinance and take over the existing mortgage, get additional money on the equity in the house and buy out the other," McGowan says. "Nowadays a lot of people are getting financial help from their family to buy out the other spouse."

McGowan advises against going to court in the hope of getting a better deal, saying there is a "very strong misconception" that family law courts do not order the sale of family homes.

"The family home is treated differently as an asset, but to say that somehow it's not going to be sold, and that typically the wife and children are going to get it, is simply not the case," he says.

"When you boil it down, the three scenarios are sale, buyout and holding it to sell down the road."

Callan says the situation may be different if one party owned the house before the relationship began.

"If you're married, it's harder as it's deemed a matrimonial asset. The court would probably look at it differently, particularly if you had inherited it prior to the marriage or relationship and transferred it into both names," she says.

In this case you could argue that rather than being split 50/50, things should be swayed in favour of the person who inherited it.

BUYING OUT ONE PARTY

In the current climate it is hard to transfer a mortgaged property from two names to one. "It's very tricky because you're relying on the consent of the banks," Callan says.

"You might have two people who want to transfer the property from one to the other and the bank is just blocking them. They're leaving people as joint owners of properties because of negative equity. That's a real millstone around people's necks; it means there's no finality and they can't separate effectively."

David Hall, chief executive of the Irish Mortgage Holders Organisation, stresses that co-borrowers are never liable for only half a mortgage. Joint and several liability means both are liable for the full amount.

"There's only one mortgage, one payment between two people, and that doesn't mean half and half," Hall says. "That's absolutely imperative in the event of being separated."

If one party stays in the house, both parties must sign any restructuring agreement.

"It's a monumental problem. One party could pay the mortgage for the next 20 years, and then it comes into profit and the other party is entitled to half the profit," Hall says.

As residential property prices bounce back from negative equity, couples who split at the depths of the recession could look to finally make a clean break from each other.

> **THE CHANGING FINANCIAL OUTLOOK IS ALLOWING PEOPLE TO FORMALISE THINGS FURTHER**

However, they could find themselves out of pocket if one is left holding down the mortgage.

SELLING THE HOME

Where both exes have contributed equally to the mortgage over the past few years, an upturn in property prices is a good thing, allowing them to finally move on.

"We're definitely seeing a few instances where the changing financial outlook is allowing people to formalise things further," says Clodagh Murphy, branch manager of Quillsen estate agents in Ranelagh.

For estate agents, emotional, financial and logistical aspects are associated with the sale of a separated couple's home.

"The agent would work towards having a very good working relationship with both parties to try to ensure that this part of the process goes as smoothly as possible," Murphy says.

"We try to ensure that all of our communications with both parties are very open and transparent, so both know where things are going with regard to the transaction."

The process is not without complication and Murphy says a couple should appoint an agent with experience to work through the minefield that often emerges. Examples include the property not being shown to its best advantage because of an unwilling seller on one side.

"That's not going to change. We as agents have to just work with that and make the best of it, as opposed to putting more difficulties into what may already be a very difficult scenario," Murphy says.

The property sector is back — let's not break it again

LINDA DALY
MARKET WATCH

When we set about planning The Sunday Times's new residential property supplement Move, a colleague suggested a column entitled: "Have we learnt nothing?" Yes, the market is bouncing back but while the speed of its return causes trepidation among those who remember the excesses of a decade ago, the reappearance of a healthy property sector is no bad thing.

Negative equity is still an issue for those who bought homes in the mid-Noughties, so many have warmly greeted a steady rise in prices. In some cases, they just want a big enough hike to let them offload what feels like a financial noose around their necks.

Yet if a novel were to be written about Ireland's resurgent property market, it would have to be A Tale of Two Markets. Time and time again, estate agents around the country stress that rural locations are yet to feel Dublin's upswing. Many agents test the market with their initial guide, then later reduce them to reflect the reality.

As the scene returns to some level of normality, estate agents, banks, developers, homeowners, journalists and sellers alike must take a sober approach to the market. There should be no more queuing overnight for properties off plan — like this journalist did, embarrassingly. Banks can't lend excessively and potential homeowners can't cook the books. Sellers and agents should set realistic guides. Developers must be held accountable for lapses in fire safety — Longboat Quay or Priory Hall cannot happen again. Media reportage needs to be honest. Let's discourage bidding wars, and promote an open and transparent process.

The government needs to show creativity and intelligence to develop solutions to tackle issues facing the market, such as the low supply of homes and overpriced rents.

As chinks of light work their way through the property crash's rubble, it is up to every player in the market to prevent the roof from falling in on top of us again.

Price watch: South Co Dublin

The Elms, Mount Merrion Ave	*2 bed apartment*	2010	€185,000
	1 bed top floor apartment	2015	€250,000
Springhill Avenue, Blackrock	*3 bed dormer*	2010	€440,000
	3 bed dormer	2015	€506,751
Lower Kilmacud Road, Stillorgan	*3 bed semi*	2010	€535,000
	3 bed semi	2015	€620,000
Beechwood Court, Stillorgan	*Apartment*	2010	€224,000
	Apartment	2015	€268,327

Rent controls are very different from the forbidden freeze

LORCAN SIRR
ON THE HOME FRONT

A GROWING number of people in Ireland now rent. Up to one third of urban dwellers live in rented accommodation and may never buy, according to the National Economic and Social Council. This is a for a variety of reasons that range from changes in household formation and immigration to incomes, house prices and credit.

The rental market, however, is not yet suitable for such long-term living, as can be seen when it comes to the controversial issue of rents.

The concept of rent control has a vocabulary fraught with misunderstanding, antagonism and ignorance.

It is very frustrating to a housing person like me, for example, to hear a programme such as Morning Ireland discuss "rent freezes" as it did recently. A rent freeze, whereby rents cannot be increased at all, has been unconstitutional in Ireland since the early 1980s. A landlord has a right to make a profit, and rightly so.

Way back in 2000, the Commission on the Private Rented Residential Sector said "it is mistaken to think that rent control is unconstitutional".

Yet opponents of rent regulation continue to regurgitate this line of unconstitutionality, mostly unchallenged.

The quip about rent control being the fastest way to destroy a city is regularly trotted out as some sort of inarguable profundity. This is a sneaky one to use in an Irish context as many believe rent control equals that pesky, unconstitutional rent freeze.

Can you see why a person might be frustrated?

Rent control does not equal rent freeze. Rather, it is a broad umbrella term for a range of potential measures which can be used to regulate the rent charged for a property.

Said regulation can happen at the beginning of a lease — where the initial rent is determined by reference to a register or index, as is the norm in Stockholm. It can come into force when the rent is being reviewed at the permitted interval, as in Berlin, or at both junctures, as in Paris.

Those who regurgitate the line that rent control is unconstitutional should know this: rents are to some extent already controlled in Ireland as they cannot be reviewed more than once every 12 months, and then cannot be set above the current market rent.

Like many things in Ireland, that last condition is a bit vague, as how does one determine the "current" market rent? The Private Residential Tenancies Board maintains a register of rents but it's not compulsory to refer to it.

In effect rent control can be pretty much anything in Ireland, except a freeze.

In Berlin — which is often cited as the Holy Grail for renting because of its decent security of tenure — rents were for a long time limited. This meant they couldn't increase by more than 15% over three years. Since June this year, the *mietpreisbremse* (rent control) has been in effect, meaning rent increases can be no higher than 10% above a state body fixed price (per square metre based on a census of rents). So, rent increases can happen, but at a slower pace.

It is apparently working well in retarding rent increases and maintaining affordability. Funnily enough, landlords aren't fleeing the market either.

Minister for the environment and community Alan Kelly wants to temporarily limit rent increases to inflation. His opponents say rent controls are a symptom of a broader issue of lack of supply. Well yes, perhaps, but while there is no supply should people really have to contend with 50% rent increases, as we have seen recently?

Controls made Berlin good for renters

Regulating or controlling rent increases is part of creating a desirable rental market, which is becoming increasingly important.

Affordability in the housing market is regulated, so why not in the rental market?

The market is just as crucial for Ireland's economic competitiveness. A market where rents can increase by up to 50% at review is not an attractive proposition for prospective foreign direct investment (FDI) workers. I suspect the current state of the rental market is a black mark on the Industrial Development Authority's ability to sell Ireland as a destination. Most FDI workers opt to rent rather than purchase.

Rent control, rent certainty, and rent regulation is part of a process of making the rental sector fit for purpose and competitive. Some landlords may well leave if it is introduced, but others will enter the market seeing the value in predictability of income. I'd take a chance on it.

Lorcan Sirr is housing lecturer at Dublin Institute of Technology